



POLICE DEPARTMENT

September 9, 2021

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In the Matter of the Charges and Specifications :

- against - :

Captain Marash Vucinaj :

Tax Registry No. 907538 :

Transit Authority Liaison :

Case No.

2017-17534

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Peter Brill, Esq.
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306 Fifth Avenue, Penthouse
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To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Captain Marash Vucinaj, currently assigned to Transit Borough Brooklyn, while on-duty, in Queens County, on or about November 14, 2015 through May 25, 2017, on ten (10) separate occasions, having become aware of or receiving an allegation of corruption or serious misconduct involving a Member of the Service, did fail and neglect to immediately notify his Commanding Officers and/or Internal Affairs Bureau Command Center, as required.

P.G. 207-21, Pages 1 and 2

ALLEGATIONS OF CORRUPTION
AND SERIOUS MISCONDUCT
AGAINST MOS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 28, 2021.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Department called Deputy Inspector Bienvenido Martinez as its sole witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty, in part, and recommend a penalty of the forfeiture of eight (8) vacation days.

ANALYSIS

It is undisputed that Respondent has been a frequent reporter of misconduct to IAB. According to Respondent, his notifications to IAB have resulted in over a hundred Internal Affairs Bureau ("IAB") logs being generated. This case concerns ten such logs (Tr. 44, 54, 56, 154, 157, 197, 296-97).

It is the Department's position that Respondent engaged in misconduct by failing to report the ten (10) allegations to IAB as soon as he became aware of them, rather than after investigating them further. Respondent counters that, despite making many reports to IAB in the

past, never before has he been told that he failed to make his reports in a timely manner.

Respondent claims that this matter has been brought, instead, to retaliate against him for his history of bringing so many allegations of misconduct to the attention of the Department.

In a Bill of Particulars ("BOP"), detailing each of the ten (10) alleged untimely notifications, the Department sets forth the dates on which it claims Respondent became aware of each allegation and the dates on which Respondent reported each allegation to IAB. The gaps in time vary from two (2) days to approximately one (1) year. The Department asserts that the various dates in the BOP establishing when Respondent first became aware of the allegations at issue were based on Respondent's statements at an official Department interview held on April 12, 2017. As established by the BOP, the relevant dates and nature of the underlying allegations that Respondent is charged with untimely reporting are as follows:

IAB Log # & Type of Misconduct Reported	Alleged Date Respondent Became Aware of Allegation	Date Respondent Reported Allegation to IAB
15-35587 - Theft of time; overtime abuse; failure to supervise: Desk Officer assigning unnecessary overtime work	11/15/2015	11/18/2015
16-19556 - Misuse of time/Dept. resources: Inspector had on-duty MOS pick his friend up from airport	04/2016	6/1/2016
16-19557 - Misclassification of complaint: Attempted Assault to Criminal Mischief	5/15/2016	6/1/2016
16-19558 - Misclassification of complaint: Burglary to Criminal Mischief	1/9/2016	6/1/2016
16-19561 - Improper arrest; Failure to supervise	1/19/2016	6/1/2016
16-19562 - Stealing time: lateness and leaving early	5/2015	6/1/2016
16-19563 - Overtime abuse; unnecessary work: CMOS signing other members' overtime slips	mid-March 2016	6/1/2016
16-19565 - Fail to supervise; misuse of time; cooping	5/17/2016	6/1/2016
16-20044 - Misclassification	5/7/2016	6/4/2016
17-19760 - Fail to prepare report; incomplete investigation; perjury	5/23/2017	5/25/2017

The BOP notes that of the ten (10) reported allegations of misconduct, only one (16-19562) was later substantiated by IAB.

The Department's sole witness, Deputy Inspector ("DI") Bienvenido Martinez, the Commanding Officer of IAB Group 1, testified that he, and members under his supervision, investigated the following allegations of misconduct against Respondent: failure to supervise, failure to make a timely notification to IAB, false and misleading statements, and computer misuse. He also investigated allegations that Respondent was being retaliated against. Of these allegations, the only allegation that was substantiated is the instant allegation of Respondent failing to timely report allegations of misconduct to IAB (Tr. 26, 52-53).

DI Martinez explained that members of the service are required to report allegations of misconduct and corruption "in a timely manner," which he clarified meant "immediately" (Tr. 27). DI Martinez admitted, however, that neither the Patrol Guide, nor "police training document[s]," define timeliness for the purposes of reporting allegations of misconduct to IAB (Tr. 45-46).

DI Martinez testified as to each of the allegations of misconduct set forth in the BOP. He stated that, in general, where a matter is minor, or could be resolved with a command discipline, Respondent would have been free to resolve the issue on his own; where, however, the conduct was "more egregious," the matter should have been reported to IAB. DI Martinez further stated that where a notification to IAB was required, Respondent should have made the notification prior to the conclusion of his tour on the day he became aware of the allegation or in a "timely fashion," opining that 2-3 days was untimely. DI Martinez continued that whether the misconduct Respondent failed to report in a timely manner constituted "serious misconduct" depended on the facts of the allegation as assessed by IAB. (Tr. 37-38, 68-69, 86-87, 104-05).

DI Martinez testified that he has had numerous interactions with Respondent "over the course of four years . . . whether they were formal interviews or conferrals." DI Martinez confirmed that Respondent had made it a "regular occurrence" to report allegations of

misconduct to IAB. They occasionally disagreed as to whether a report of misconduct was an allegation, a hunch, or an idea. DI Martinez was aware that Respondent had also had numerous conferrals with the Quality Assurance Division concerning the misclassification of complaints, some of which have resulted in substantiated allegations of misconduct (Tr. 44, 54, 56).

The Department submitted no exhibits.

Respondent testified that between 2015 and 2017, he reviewed dozens of complaint reports every day, stating: "I can tell you when I got assigned to the Transit Authority Liaison Unit since I had no, I mean literally no duties and responsibilities at all, I can literally say I [looked at] dozens [of complaint reports] every day" (Tr. 296-97). Respondent claimed that since his promotion to Captain, in December 2009, he has been subject to retaliatory transfers, "false statements, false investigations," and placed in positions where he had very few meaningful duties or responsibilities. He posited that he was subject to retaliation because of his reputation for reporting allegations of misconduct against fellow members of the service. Despite a long history of making notifications to IAB, Respondent stated that prior to the instant case he had never before been instructed that any of his reports were untimely (Tr. 133-35, 145-150).

Respondent claimed that he felt he had to take extra steps to prove allegations he brought to the attention of IAB so that they would be taken more seriously; he felt that prior allegations of misconduct he had brought to the attention of his superiors and IAB had not been addressed (Tr. 178-79). Respondent explained that he would not report a belief that he had as to "possible misconduct" until he was able to verify it in some way (Tr. 265). Respondent stated, "I call with the facts and I do not call on hunches. When I'm calling it in, it's for a fact. The allegation is not simply just an allegation. These transgressions, these malfeasances and whatnot were actually committed." (Tr. 175).

Following Respondent's April 12, 2017, official Department interview in this matter, Respondent received an email from now-Retired Deputy Chief Ellen Chang, the Commanding Officer of the Special Investigations Division of IAB, which supervises Group 1, stating the following:

Good afternoon, As discussed on 4/13/17, allegations of corruption and serious misconduct require a timely notification to the IAB Command Center. Minor violations and issues of supervision and training should be addressed at the command level. Please refrain from sending emails to me regarding these issues. Thank you.

(Resp. Ex. A). Respondent interpreted this as "telling me, basically, you know, piss off. . . . She didn't want to hear any of it" (Tr. 264). At trial, the parties agreed that Respondent's access to several Department databases he had used to investigate potential acts of misconduct had been revoked in 2018 during IAB's investigation of Respondent (Tr. 136, 296).

As to the ten (10) instances of failing to make timely reports to IAB set forth in the BOP, Respondent, at trial, offered the following testimony:

IAB Log # & Type of Misconduct Reported	Alleged Date Respondent Became Aware of Allegation	Date Respondent Reported the Allegation to IAB	Respondent's Testimony
15-35587 - Theft of time; overtime abuse; failure to supervise: Desk Officer assigning unnecessary overtime work	11/15/2015	11/18/2015	Respondent disagreed that he was aware of the misconduct on 11/15/2015. Respondent produced a search history for a Department database (OMNI results), showing that he searched the database in connection with this matter on 11/18/2015, the same day he reported it to IAB. Without a copy of the call he made to IAB reporting this allegation, he is unable to establish any further facts concerning this allegation. (Resp. Ex. B; Tr. 264-65).
16-19556 - Misuse of time/Dept. resources: Inspector had	04/2016	6/1/2016	Respondent explained that in a "casual conversation" with another Captain, he was told that an Inspector had ordered another officer to drive to JFK in a Department vehicle to pick up a friend. Respondent stated

on-duty MOS pick his friend up from airport			that he did not immediately report this conversation to IAB because he did not consider this an allegation of corruption or "serious misconduct" and he had no further details to report; rather, he reported this allegation to IAB as an "FYI . . . you might want to know about this, as well." (Tr. 184-87, 275)
16-19557 - Misclassification of complaint: Attempted Assault to Criminal Mischief	5/15/2016	6/1/2016	Respondent has no memory of when he became aware of this misclassified complaint in the 113 th Precinct. Respondent stated that it was possible he became aware of the complaint via a "49" sent via Department email concerning incidents in his borough; however, he was not provided documents by the Department in discovery that would have assisted him in establishing the date of when he reviewed the relevant complaint. He admitted that he reviewed the complaint and believed that it had been misclassified prior to the day he reported it. He stated, however, that it was his practice in connection with misclassified complaints to wait a period of time to give the relevant command time to address any human error or training deficiencies that led to the misclassification and to re-classify the complaint. Respondent stated that generally he would wait between several days to two weeks. Respondent stated that this allegation of misconduct was referred back to him for investigation after he reported it. Respondent thought it "unprecedented" that an allegation concerning misconduct outside his command would be referred back to him. (Tr. 155-56, 188, 192-97, 248-49, 280-83)
16-19558 - Misclassification of complaint: Burglary to Criminal Mischief	1/9/2016	6/1/2016	Respondent stated that on January 9, the date of the underlying incident that was misclassified, he was the Duty Captain and became aware of a hospitalized prisoner in the 106 th Precinct. The complaint report was classified as criminal mischief, but Respondent believed it should have been classified as a burglary. Furthermore, when he went to the hospital, the hospitalized prisoner told Respondent he had been assaulted with a knife. Respondent informed "Inspector Schiff", the Commanding Officer of the 106 th Precinct, of the misclassification and that a cross-complaint for felony assault

			<p>should be prepared as well. The Inspector sent him a text message that night, stating that he would "handle it from here."</p> <p>Respondent forgot about the matter until around the time of June 1, 2016, when he "came across these complaint reports" and decided to take another look. Discovering that the complaints remained improperly prepared, he reported the matter to IAB. (Tr. 32-33, 198-204)</p>
16-19561 - Improper arrest; Failure to supervise	1/19/2016	6/1/2016	<p>Respondent stated that on January 19, 2016, he was assigned as a Duty Captain and became aware of an arrest of three occupants of a rental car that had not been returned on time to the rental company. The renter, the driver's boyfriend, was not in the vehicle. Respondent did not believe there was probable cause for an arrest. One of the occupants was also found to have an open warrant in an open investigation in the 109th Precinct. Respondent stated that "Inspector Urprasad" approved and authorized the arrests. Respondent stated that he did not look into the matter again until on or around June 1, 2016. He stated that he reported this matter to IAB "as an FYI" and a matter they may be "interested and concerned about." (Tr. 204-212)</p>
16-19562 - Stealing time: lateness and leaving early	5/2015	6/1/2016	<p>Respondent stated that as a Duty Captain "one night" he was in the 102nd precinct when "Lieutenant Edmonds," the platoon commander, in the presence of "Lieutenant Olvorano," the command's Integrity Control Officer (ICO), asked Respondent, "what tour do you do and how many hours?" Respondent explained that captains do nine hour tours for the first five years. "Lieutenant Edmonds" replied, "oh, well Captain Raia, she is not doing it." Respondent said he flipped through the command log and noticed that "Captain Raia" at times was not performing a nine hour tour. "Lieutenant Edmonds" then stated that "you know, we may not be aware that there might be a 28 here." Respondent stated that he did not take it as a serious allegation at the time and he had reason to question the credibility of "Lieutenant Edmonds" and he thought they might be setting him up by making a false allegation against an executive. Respondent</p>

			stated that in or around the time of June 1, 2016, he decided to revisit the matter. As a Duty Captain, he asked the 102 nd Precinct ICO for the command logs and looked through them. After identifying "several dozen instances" of Captain Raia working less than nine hour tours of duty, he reported the matter to IAB. (Tr. 213-29).
16-19563 - Overtime abuse; unnecessary work: CMOS signing other members' overtime slips	mid-March 2016	6/1/2016	"At least a month or two" after Respondent was assigned to the 101 st Precinct in mid-March of 2016, Respondent learned that civilians at the 101 st Precinct were doing "an unbelievable amount of overtime," and approving each other's overtime without the knowledge of the administrative lieutenant. Respondent notified the commanding officer, ICO, and administrative lieutenant because "it's a command-level issue." For a time, the problem appeared to stop. When he discovered that it was continuing, however, he informed IAB. (Tr. 229-35, 291-92)
16-19565 - Fail to supervise; misuse of time; cooping	5/17/2016	6/1/2016	Respondent found that a sergeant at his command was "cooping." The first time he admonished the sergeant. The second time he issued the sergeant a Schedule "B" Command Discipline. He then received a phone call from "Inspector Schiff," who tried to "shut down" Respondent's investigation into the sergeant. Respondent then decided to report "Inspector Schiff's" actions to IAB. (Tr. 235-244, 293-94)
16-20044 - Misclassification	5/7/2016	6/4/2016	Respondent clarified that 5/7/2016 was the date the complaint was created, not the date he reviewed it. Respondent is unable to determine the date he reviewed this complaint, but stated that it was no more than two weeks before calling IAB. When he did review it, however, Respondent believed that a second complaint report for felony assault should have been prepared in a "shots fired" case. Respondent informed the Data Integrity Unit and a "Commanding Officer." When he determined the deficiency was not corrected, he contacted IAB. Respondent stated that this allegation was referred back to him for investigation after he reported it. (Tr. 156-60, 244-49)

17-19760 - Fail to prepare report; incomplete investigation; perjury	5/23/2017	5/25/2017	In connection with a crime that occurred on May 23, 2017, on the subway, while he was assigned to Transit District 30, Respondent was instructed to conduct a follow-up investigation. On May 25, 2017, he called the female victim and her girlfriend and determined that it was in fact a bias-related crime. The bias element had not been identified by the initial investigator. (Tr. 249-57)
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No prior statements of Respondent were entered into evidence to refute Respondent's version of events or to refresh his recollection of them.

Respondent explained that the reason many of the ten (10) instances charged by the Department came to the attention of IAB on June 1, 2016, was because on that day he had contacted IAB for an entirely different purpose, and, only as an "FYI," mentioned other allegations of misconduct he either believed had occurred or believed IAB should look into further. His original purpose for calling IAB on June 1, 2016, was to inform them that "Inspector Schiff" and others in Patrol Borough Queens South were "subverting" his efforts to correct violations of "Department policy and procedures" within the command (239-41).

Throughout his disciplinary trial, Respondent stated that he was significantly disadvantaged in preparing his defense because he was not provided the audio of his calls to IAB, which he believed would more clearly establish the dates on which he became aware of misconduct and any investigative steps he took prior to reporting allegations of misconduct (Tr. 169). While Respondent's attorney clarified that he had not specifically requested these items, the Department confirmed that the audio of Respondent's calls to IAB were not part of the discovery in this matter (Tr. 170).

FINDINGS

The record reveals a confluence of confusion among the parties as to the Department's policy concerning the reporting of allegations of misconduct. As an opening gambit, the Department, in the body of its specification, charged respondent with failing to report allegations of "corruption or serious misconduct" and titled the relevant provision of the Patrol Guide it claimed Respondent violated, 207-21, as "Allegations of Corruption and Serious Misconduct Against MOS." In fact, however, that provision of the Patrol Guide has not used the words "serious misconduct" as a descriptor of the type of misconduct members of the service are required to report since October 2009. Rather, the operative language at the time of Respondent's alleged misconduct, which remains in place today, requires members of the service to report "corruption and other misconduct."

When asked at trial whether the Department considered the allegations Respondent failed to report to be examples of "serious misconduct," the Department replied that it did not regard the allegations to be examples of serious misconduct, but rather examples of "corruption" (Tr. 11). The Department's sole witness, however, Deputy Inspector Bienvenido Martinez, Commanding Officer of the Internal Affairs Bureau Special Operations Division, disagreed. He testified that the difference between corruption and misconduct is that corruption is criminal and that he regarded the misconduct Respondent failed to report as either "misconduct" or "serious misconduct" depending on the facts of the allegations reported, the ultimate determination of which is made by IAB (Tr. 86-87).¹

There also appeared to be confusion as to whether executive members of the service have greater leeway to investigate allegations of misconduct prior to reporting them to IAB and whether notifying one's commanding officer is sufficient to satisfy the notification requirement.

¹ More specifically, IAB is tasked with investigating allegations of "serious misconduct" while "allegations of lesser misconduct or violations" are assigned by IAB "to the appropriate borough/bureau Investigations Unit" (see Organizational Guide 109-01, Internal Affairs Bureau).

The specification with which Respondent is charged states that as to the ten (10) incidents at issue here, Respondent “did fail and neglect to notify his Commanding Officers and/or Internal Affairs Bureau Command Center.” At trial, when asked, “So the policy says notify Internal Affairs or a commanding officer, correct?”, DI Martinez answered, “Yes” (Tr. 66). Patrol Guide provision 207-21, however, makes no exception for a notification to a commanding officer.

Indeed, the stated purpose of the October 2009 changes was:

[T]o enable the Internal Affairs Bureau (IAB) to evaluate reported allegations of misconduct and forward them to the appropriate investigative unit. In addition, the procedure requires members of the service to report all allegations of corruption or other misconduct directly to the IAB Command Center, thus eliminating the option of reporting such allegations to their commanding officer in lieu of IAB.

(Department Manual Revision Notice 09-05 (issued October 16, 2009)).

Respondent further testified, without any challenge from the Department, to several conversations he had with superiors, who he named, wherein he was dissuaded from continuing to pursue alleged malfeasance he had identified. He also testified that on the day after his official Department interview in this matter, the former commanding officer of IAB’s Special Investigations division emailed him to tell him to stop emailing her, to only contact IAB in connection with allegations of “serious misconduct,” and to handle “[m]inor violations and issues of supervision and training . . . at the command level.” A reasonable inference to be drawn by Respondent from this email is that IAB believed Respondent had been previously reporting matters he could have resolved at the command level to IAB. The Department presented no contrary prior statements of Respondent or his superiors to challenge Respondent’s version of events.

Despite the confusion among the parties in this matter, the Patrol Guide and Department precedent is quite clear. The Department’s policy concerning the reporting of allegations of

misconduct to IAB is as follows: (1) a member of the service must call the IAB Command Center “upon observing, or becoming aware of corruption or other misconduct[,] or upon receiving an allegation of corruption or other misconduct involving a member of the service” (P.G. 207-21), (2) the notification must be made to the IAB Command Center immediately or as soon as reasonably practicable,² (3) the obligation is not satisfied by any other communication other than to the IAB Command Center, including a notification to one’s own supervisor or commanding officer (P.G. 207-21),³ and (4) the obligation to report allegations of misconduct includes “naked allegations” presented without any supporting evidence.⁴ While the Tribunal is willing to provide respondents with the benefit of the doubt where Department policy and precedent is vague or conflicting, such vagaries do not exist here.

At trial, Respondent averred that, because of his supervisory role as a Department executive, he should be granted additional leeway in connection with investigating misconduct prior to any obligation to report the misconduct to IAB (Tr. 323-24). While it is true that the Patrol Guide permits commanding and executive officers to issue schedule “A” and “B” command disciplines for certain enumerated categories of misconduct without first reporting the misconduct to IAB (or DAO and the “patrol borough adjutant” if proceeding under P.G. 206-03, Page 2, Para. 3), none of the misconduct that Respondent is alleged to have reported in an untimely manner is among the enumerated categories of misconduct appropriate for adjudication

² The word “upon” as used in Patrol Guide provision 207-21 has consistently been interpreted as “immediately.” See *Disciplinary Case No. 11335/14* [Nov. 20, 2015] [“[R]ather than report it immediately to IAB as required, the sergeant first investigated the matter himself; about two weeks later, he finally notified IAB.”] [citing *Disciplinary Case No. 84349/08* [May 7, 2009]]; *Disciplinary Case No. 84137/08* [June 1, 2010] [“Finally, it is clear that the Respondent did not immediately call IAB to report [a complainant’s] allegation.”].

³ The one exception is where a member of the service is in receipt of an allegation of corruption against themselves. In such a circumstance, the member concerned must request a supervising officer to respond to the scene, who must in turn confer with the IAB Command Center (P.G. 207-21, Page 2, Additional Data).

⁴ See, e.g., *Disciplinary Case No. 79637/04* [Dec. 6, 2004] [“Respondent, who testified earnestly, believed the matter was not yet ripe for IAB. As set forth above, I disagree insofar as IAB is in the best position to make that determination.”].

by a Schedule “A” or “B” Command Discipline without first making such notifications. While misconduct outside of these enumerated categories may necessitate an immediate command-level investigation in order to ensure that corrective action is taken, such investigation does not excuse the notification obligation. Finally, the leeway afforded supervisors to investigate and address minor violations in their own commands prior to or without a notification to IAB does not extend to alleged misconduct in other commands, as was often the case with the investigations undertaken by Respondent.

The Department’s policy as to the reporting of allegations of misconduct is broadly-worded by necessity in order to avoid the very interpretative problems exemplified in this disciplinary matter. It is left to IAB to separate the wheat from the chaff and assign bona fide allegations of misconduct to the appropriate investigator. A member of the service need not concern themselves with questions of how much evidence they need to possess before reporting misconduct because members are required to report mere “allegations.” And members of the service need not decide whom in the Department they should notify because in all cases (except minor violations enumerated in P.G. 206-03) the answer must also include a notification to the IAB Command Center. Without a central authority to log each allegation of misconduct, multiple members of the service might investigate the same misconduct unaware of prior investigatory actions, and one might unknowingly harm an investigation already underway. In all cases, other than those enumerated in P.G. 206-03, it is IAB’s duty to determine which persons and investigative units in the Department are best suited to investigate the wide variety of allegations received by the Department.

Here, there is little doubt that in several instances Respondent fell short of his obligations to immediately report allegations of misconduct to the IAB Command Center. He conducted investigations without first obtaining an IAB log number and usurped IAB’s role by

preliminarily assigning himself to investigate misconduct, even as to matters outside his command. The failure to notify the very entity tasked with assessing and assigning such investigations, as soon as reasonably practicable, created administrability problems that frustrates one of the core responsibilities of any public agency: operational efficiency (*see, e.g., Disciplinary Case No. 84349/08* [May 7, 2009] [“The perils of self-investigations are many.”]; *Disciplinary Case No. 79637/04* [Dec. 6, 2004] [“[The subject officer] should have [] immediately notif[ied] IAB, which has the resources and experience to investigate such a matter expeditiously, thoroughly, and confidentially. Indeed, by opting to conduct an internal investigation, the [subject officer] risked alerting [the offender] and/or compromising the investigation.”]).

Nevertheless, in seven (7) of the ten (10) instances detailed in the Department’s BOP (Log #s 15-35587, 16-19557, 16-19558, 16-19563, 16-19565, 17-19760, and 16-20044), the Department did not establish when Respondent became aware of the alleged misconduct with anything but the conclusory statements in their BOP.⁵ The Department claimed that Respondent had established these dates at his official Department interview and, therefore, relied on being able to establish these dates during Respondent’s testimony; yet, at trial, Respondent testified that he did not have a firm memory of the dates and the Department provided no prior statements of Respondent to the contrary to attempt to refresh his recollection or impeach him.

For instance, in connection with IAB Log #16-20044, Respondent testified that on January 9, 2016, as the assigned Duty Captain, after interviewing a hospitalized prisoner, he

⁵ In connection with the complaint reports Respondent reviewed wherein he believed the charged crime was misclassified, Respondent stated that it was his common practice to wait a period of time to give the relevant command time to address any human error or training deficiencies that led to the misclassification and to correct the complaints. Respondent stated that generally he would wait between several days to two weeks; however, only when he later revisited a complaint report and discovered that it had not been corrected would he consider the matter to be misconduct and report it to IAB. No evidence was presented that this practice in connection with correcting errors in complaint reports was unreasonable. In any case, the Department failed to establish the dates on which Respondent revisited such complaint reports. (Tr. 194-95, 248-49).

believed that a complaint report had been misclassified and also believed a cross-complaint should be prepared. Respondent informed the relevant command's Commanding Officer, who told Respondent that he would "handle it from here." Respondent testified that he "forgot" about the matter until "around the time" of June 1, 2016, when he decided to take another look at the complaint report and discovered that it was not corrected. He reported it to IAB on June 1, 2016. Assuming the veracity of Respondent's testimony, which was unchallenged, it was reasonable for Respondent to believe that the Commanding Officer would "handle it." It was not misconduct as of yet since Respondent obtained new information from a hospitalized prisoner such that the complaint report only needed to be updated and revised, which Respondent understood the Commanding Officer would "handle." When Respondent chose to revisit the complaint report, however, learning that it was not corrected, the onus fell on Respondent to timely report the alleged misclassification to IAB. Respondent was unsure, however, of the date when he revisited the complaint report, believing it to be "around the time" he reported the matter to IAB, and the Department failed to produce any evidence establishing the date. The failure to produce Respondent's OMNI (complaint) database search history or the audio of Respondent's calls to IAB, further frustrated any ability to establish the timing and order of events with any particularity. The Department's case was similarly lacking with regard to the other alleged instances among the seven (7) identified above.

Accordingly, with regard to the charge of failing to timely report IAB Log numbers 15-35587, 16-19557, 16-19558, 16-19563, 16-19565, 17-19760, and 16-20044, Respondent is found Not Guilty.

In connection with the remaining three (3) instances of failing to timely report allegations of misconduct set forth in the Department's BOP (Log #s 16-19556, 16-19561, and 16-19562), Respondent admitted he had knowledge of the misconduct prior to making his reports. With

regard to IAB Log #16-19556, Respondent admitted that in a causal conversation with another Captain he was told that an Inspector had ordered another officer to drive to JFK to pick up the Inspector's friend. Respondent admitted that he did not immediately report this allegation to IAB (Tr. 275). That decision contravened clearly stated Department policy requiring Respondent to immediately report the allegation to the IAB Command Center. Respondent's defense that he did not consider this allegation to be corruption or "serious misconduct" has no merit. It was not for Respondent to make such a determination.

As for IAB Log #16-19561, Respondent admitted that as a Duty Captain on January 19, 2016, he reviewed three arrests that he believed had been improperly made. He further believed that an Inspector had approved these arrests because the boyfriend of the driver had "ties" to another case (Tr. 208-09). Respondent admitted that he did not report these allegations of misconduct to IAB until June 1, 2016. A delay of six months in reporting these allegations is inexcusable.

As to IAB Log #16-19562, Respondent admitted that prior to June 2016, he was assigned as a Duty Captain in the 102nd Precinct when he was told that another Captain was not performing full tours of duty. Respondent admitted that sometime later he retrieved command logs from the 102nd Precinct to verify the misconduct for himself and then reported the matter to IAB. After IAB became aware of the allegation, which they claim was reported to them over a year after Respondent became aware of it, they substantiated the report and the subject officer was subsequently disciplined (Tr. 92). Respondent's conduct contravened clearly stated Department guidance requiring Respondent to report the allegation as soon as he was in receipt of it.

Accordingly, in connection with IAB Log numbers 16-19556, 16-19561, and 16-19562, Respondent is found Guilty of failing to report those allegation of misconduct in a timely manner.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history was also examined (*see* 38 RCNY 15-07). Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent was appointed to the Department on February 28, 1994, and he has no prior disciplinary history. Respondent has been found guilty of failing to report three allegations of misconduct in a timely manner. The Department Advocate has recommended a forfeiture of ten (10) penalty days in connection with the ten (10) allegations that it charged Respondent with failing to report in a timely manner, seven (7) of which this Tribunal found the Department had failed to prove.

Among the penalties delineated for specific conduct in the Disciplinary Guidelines, a penalty range is not established for the misconduct of failing to timely report an allegation of misconduct. Department precedent, however, has established a penalty range of the forfeiture of eight (8) to ten (10) vacation days for similar misconduct (*see, e.g., Disciplinary Case No. 84349/08 [May 7, 2009]*, [Fourteen-year sergeant forfeited ten (10) vacation days whereby he waited two weeks to inform IAB after he was informed by an officer that the officer's partner was engaged in improper police stops.]; *Disciplinary Case No. 79637/04 [Dec. 6, 2004]* [Fifteen-year Captain forfeited eight (8) vacation days for a nearly three week delay in reporting to IAB that during the execution of a search warrant at a "gaming operation," two paintings were

seized which contained the same name as a member of the service who worked in the same command as Respondent. Desiring to root out corruption at his command, the Captain decided to perform his own investigation before notifying IAB. The trial commissioner noted that there was no suggestion that the Respondent's failure to timely report his suspicion or concern was an attempt to cover up for a fellow member of the service nor that Respondent intended to subvert the IAB review process; rather, he noted that the subject officer testified credibly that he believed the matter was not yet ripe for IAB. The trial commissioner recommended a penalty of 5 vacation days. The Police Commissioner increased the penalty to 8 vacation days, stating that the Captain, "as a ranking officer, nevertheless failed to take proper command supervisory actions, potentially compromising any resultant investigation."].

While the Disciplinary Guidelines do not address penalties for failing to *timely* report allegations of misconduct, they do set forth general aggravating and mitigating circumstances that may be applied to any disciplinary matter (*see* Disciplinary Guidelines at 9-10). Among the mitigating factors, two apply here: (1) "The state of mind of the member of the service, including the absence of intent;" and (2) "The voluntary candor and assistance of the member of the service, which goes beyond the mandates of cooperation and truthfulness, and aids the investigation."

The record revealed that Respondent has a robust history of addressing and reporting perceived misconduct. Indeed, the parties, at trial, presented Respondent as an individual driven by a compulsion to investigate and report allegations of misconduct to the Department,⁶ even if many of those allegations are ultimately unsubstantiated. The record further revealed that no discernable benefit was to be gained by Respondent from a delay in reporting these allegations.

⁶ Respondent's attorney described Respondent at trial as a "hard ass," who "tends to get people upset with him" because of his rigid attitudes concerning job performance and addressing misconduct (Tr. 319, 324).

Indeed, even the generalized concern occasionally expressed by some members of the service of the fear of being labeled a “rat” would not apply to Respondent, who already had a long history of reporting misconduct (*see, e.g., Disciplinary Case No. 84137/08* [June 1, 2010] [“The Respondent’s explanation that [he] was uncomfortable speaking about the ‘detective’ to [his supervisor] in front of [his partner] because he did not want to be labeled ‘a rat’ does not excuse his failure to immediately notify his supervisor at the scene.”]). Lastly, it is unlikely that any of the ten allegations of misconduct set forth in the Department’s BOP, including the one that IAB ultimately substantiated, would have come to the attention of the Department but for Respondent’s candor and voluntary assistance.

Based on the record of Respondent’s proven and substantial history of reporting misconduct and his eagerness to assist the Department with investigations, the Tribunal believes that there are ample reasons to impose a mitigated penalty in this matter. While Respondent is an executive and a supervisor, this is not a matter in which Respondent was wrongfully advising subordinates or inappropriately supervising subordinates. Indeed, Respondent testified, in the absence of record evidence to the contrary, that he had been misled and misadvised by his superiors in connection with his efforts to bring allegations of misconduct to the attention of the Department. Accordingly, on balance, the mitigating factors far outweigh any potential aggravating factors present in the instant disciplinary matter.

As such, the Tribunal, in accordance with Department precedent and the Disciplinary Guidelines, recommends the forfeiture of eight (8) vacation days.

APPROVED

OCT 14 2021
DERMOT SNEA
POLICE COMMISSIONER

Respectfully submitted,



Josh Kleiman
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
CAPTAIN MARASH VUCINAJ
TAX REGISTRY NO. 907538
DISCIPLINARY CASE NO. 2017-17534

Respondent was appointed to the Department on February 28, 1994. Respondent has no disciplinary history.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials